HQ-440

FEDERAL AVIATION AGENCY

[14 CFR Part 61]

[Notice 63-30; Docket No. 1891]

CLARIFICATION OF PRIVATE PILOT PRIVILEGES

Notice of Proposed Rule Making

The Federal Aviation Agency has under consideration a proposal to amend Part 61 [New] of the Federal Aviation Regulations to clarify certain provisions relating to the privileges and limitations of private pilots.

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the notice or docket number and be submitted in duplicate to the Federal Aviation Agency, Office of the General Counsel: Attention Rules Docket, Room A-103, 1711 New York Avenue NW., Washington 25, D.C. All communications received on or before October 8, 1963, will be considered by the Administrator before taking action upon the proposed rule. The proposals contained in this notice may be changed in the light of comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons.

Under the existing rule, § 61.101, the words "a private pilot may not act as pilot in command of an aircraft for compensation or hire" are not clear. A question arose as to whether the words mean that the private pilot cannot be compensated for acting as pilot in command of an aircraft for compensation or hire or whether they mean the operator of the aircraft (who may not be the private pilot) cannot be compensated when a private pilot is acting as pilot-in-command or whether the words mean that both are prohibited from receiving compensation or hire in those circumstances. The proposed amendment would make it clear that neither the private pilot nor the operator (if other than the private pilot) may be compensated when a private pilot is acting as pilot in command nor may either be compensated for the carriage of passengers or property. In addition the amendment would list the exceptions to the rule.

When Part 43 of the Civil Aviation Regulations was adopted in 1945, § 43.60, stated "A private pilot shall not pilot aircraft for hire." A note was appended to the rule stating: "This rule permits sharing expenses of a flight or piloting in furtherance of a business when the flight is made solely for the personal transportation of the pilot."

The section was amended by Amendment 43-3 August 7, 1950, effective September 11, 1950, to read: "A private pilot shall not pilot aircraft for compensation or hire; except that he may pilot aircraft in connection with any business or employment, if the flight is merely incidental thereto and does not involve the carriage of persons or property for compensation or hire, and an aircraft salesman holding a private pilot rating may demonstrate aircraft in flight to a prospective purchaser if he has at least 200 hours of flight time credited in accordance with the provisions of Part 43."

The preamble stated that the previous rule "has been difficult to interpret, and in many instances it has unduly restricted the operations of private pilots." The preamble continued:

The following interpretations are illustrative of the application of the amendment.

1. A private pilot may share the actual operating expenses incurred during a flight. The fact that one or more passengers contribute to the actual operating expenses of a flight is not considered the carriage of persons for compensation or hire.

2. A private pilot salesman may pilot an aircraft in the course of his employment. This would not be a violation of the regulation because the flight would be merely incidental to the pilot's business of selling. He may also carry samples of merchandise in the aircraft.

3. An airline official in New York, having a private pilot rating, wishes to use a company aircraft placed at his disposal to fly to Washington in order to check the operations of the Washington office. He may do so, and also carry with him friends or other employees of the airline, provided no charge is made. Such a flight is considered merely incidental to the pilot's employment and does not involve the carriage of persons for compensation or hire.

4. The owner of a plantation or farm, holding a private pilot rating, may crop dust or seed his own land. This type of operation is incidental to the pilot's principal business of farming. He may also crop dust or seed the land of another, provided he does not do so for compensation or hire.

5. Private pilots may ferry aircraft, provided the flight is not for compensation or hire.

6. The holder of a private pilot rating engaged in selling real estate may pilot an aircraft carrying a prospective purchaser for the purpose of showing such purchaser land which is offered for sale. The flight in this instance is merely incidental to the pilot's business as a real estate operator.

The section was amended again August 1, 1961, by Amendment 43-14, to authorize private pilots to take part in charity airlifts. In the meantime a new Part 43 had been printed, and the interpretative material given in the preamble to Amendment 43-3 was no longer available for public information.

When the Civil Aeronautics Board amended § 43.60 by Amendment 43-3, it removed previous restrictions that applied to the sharing of expenses with passengers or flying in the furtherance of a business, in that permission to do so had been granted only when the flight was made solely for the personal transportation of the pilot. The Board paid heed to public comment pleading for privileges similar to those granted private operations of automobiles, so as to obtain full usefulness of aircraft in private operations.

When the section was recodified and incorporated in part 61 [New] as § 61.101, the interpretations were also omitted, including permission to "share expenses."

The ordinary meaning of "compensation" includes the act of making up for whatever has been suffered or lost through another, and the act of remuneration. Sharing of expenses would appear to be prohibited when for "hire or compensation" is prohibited, so that an exception to the rule is necessary to preserve the traditional right to share expenses, and which right has not been found objectionable.

Other circumstances in which the rule was not intended to apply are the aircraft salesman who demonstrates an aircraft in flight to a prospective buyer and the private pilot who engages in charitable organization airlift. The proposed amendment retains these situations as exceptions from the general rule.

Section 61.101(b) provides that "a private pilot may act as a pilot in command of an aircraft in connection with any business or employment if the flight is only incidental to it and does not carry persons or property for compensation or hire." This provision would be amended to make clear that although a private pilot may not carry passengers or property for compensation or hire, he may act as pilot in command of an airplane for compensation or hire in connection with any business or employment if the flight is only incidental to it and does not carry passengers or property for compensation or hire.

With respect to paragraph (d) *Category; class; type,* of § 61.101 it would be retained and paragraph (e) would be deleted as a separate paragraph and combined with (d) inasmuch as (e) is properly an exception to (d) and has nothing to do with the other provisions of § 61.101. The words "or remuneration" would be deleted as unnecessary because obviously the general prohibition of § 61.101(a) would make retention of those words redundant.

No substantive change would be made

in the provisions of § 61.101(f). The first sentence would be placed in new § 61.101(c) and the last sentence would be an exception to the list of circumstances in which the prohibition "for compensation or hire" is not applicable (§ 61.101(a)).

In consideration of the foregoing, it is proposed to amend § 61.101 of Part 61 [New] of the Federal Aviation Regulations to read as follows:

§ 61.101 General privileges and limitations.

(a) Except in the case of a private pilot (lighter-than-air) piloting a free balloon, or giving instruction therein, for compensation or hire, a private pilot may not act as pilot in command of an aircraft for compensation or hire or act as pilot in command of an aircraft carrying passengers or property for compensation or hire. However:

(1) A private pilot may act as pilot in command of an aircraft for compensation or hire in connection with any business or employment if the flight is only incidental to it and does not carry persons or property for compensation or hire.

(2) A private pilot may share the operating expenses of a flight with his passengers.

(3) A private pilot who is an aircraft salesman and who has at least 200 hours of logged flight time may demonstrate an aircraft in flight to a prospective buyer.

(4) A private pilot may act as pilot in command of an aircraft used in a passenger-carrying airlift sponsored by a charitable organization, and for which the passengers make a donation to the organization, if:

(i) The sponsor of the airlift notifies the FAA General Aviation District Office having jurisdiction over the area concerned, at least seven days before the flight, and furnishes any essential information that the office requests;

(ii) The flight is conducted from a public airport adequate for the aircraft used, or from another airport that has been approved for the operation by an FAA inspector;

(iii) He has logged at least 200 hours of flight time;

(iv) No acrobatic or formation flights are conducted;

(v) Each aircraft used is certificated in the standard category and complies with the 100-hour inspection requirement of § _____ of this chapter [Present § 43.22]; and

(vi) The flight is made under VFR during the day. For the purpose of this subparagraph, a "charitable organization" means an organization listed in Publication No. 78 of the Department of the Treasury called the "Cumulative List Organizations Described in section 170(c) of the Internal Revenue Code of 1954," as amended.

(b) *Category; class; type.* A private pilot may not act as pilot in command of an aircraft carrying passengers, other than in an aircraft of the category and class for which he is rated, and in the case of large aircraft, of the type for which he is rated. Unless prohibited by a limitation on his certificate, a private pilot may serve as pilot in command of an aircraft for which he is not rated when it is operated without passengers.

(c) A private pilot (lighter-than-air) may not give flight or instrument instruction in an airship.

These amendments are proposed under the authority of sections 313(a), 601, and 602 of the Federal Aviation Act of 1958 (49 U.S.C. 1354, 1421, and 1422)

Issued in Washington, D.C., on August 2, 1963.

W. LLOYD LANE,
Acting Director,
Flight Standards Service.

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